

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LILLIAN PERRY,

Plaintiff/Counterdefendant-Appellant,

v

TOP OF PLYMOUTH,

Defendant/Counterplaintiff/Cross-  
Plaintiff-Appellee,

and

RICHARD PERRY,

Defendant/Cross-Defendant-Appellee,

and

ANTHONY L. COSTA,

Defendant/Cross-Plaintiff/Cross-  
Defendant/Third-Party Plaintiff-  
Appellee,

v

RICHARD PERRY REALTY, INC.,

Third-Party Defendant.

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UNPUBLISHED

March 17, 2000

No. 211561

Wayne Circuit Court

LC No. 97-716472-CK

Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

This action arose from a dispute regarding the true owner of a piece of real property. Plaintiff filed suit claiming an interest in the property that was the subject of a sheriff's deed, issued to plaintiff and her then husband, defendant Richard Perry, at a foreclosure sale in November 1988. In April 1989, the mortgagor, Dana Burns, redeemed the property and promptly conveyed it to defendant Top of Plymouth. Plaintiff stated that she was unaware of any interest she had in this property, and that her husband forged her signature on the deed and on the discharge of mortgage. Plaintiff argued that because she never signed the discharge of mortgage, she has title to the property. Defendants moved for summary disposition under MCR 2.116(C)(7), MCR 2.116(C)(8), and MCR 2.116(C)(10). The trial court granted summary disposition in favor of defendants. Plaintiff appeals as of right. We affirm.

A ruling on a motion for summary disposition is reviewed de novo. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). A trial court may grant summary disposition if the claim is barred by release or payment. MCR 2.116(C)(7). "A motion under this court rule should be granted only if no factual development could provide a basis for recovery." *Smith v YMCA of Benton Harbor/Saint Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). MCR 2.116(C)(10) authorizes summary disposition where "there is no genuine issue as to any material fact, and the moving party is therefore entitled to judgment as a matter of law." *Clark v United Technologies Automotive, Inc.*, 459 Mich 681, 686; 594 NW2d 447 (1999). Once a moving party had identified the issues as to which it believes there is no genuine issue as to any material fact, the burden falls to the adverse party to set forth specific facts showing a genuine issue for trial. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Michigan law provides for a statutory right of redemption, MCL 600.3240; MSA 27A.3240. At the time of the 1989 redemption, the statute provided:

(1) If the mortgagor, the mortgagor's heirs, executors, or administrators, or any person lawfully claiming from or under the mortgagor or them, within the applicable time limit prescribed in this section, redeems the entire premises sold by paying to the purchaser, the purchaser's executors, administrators, or assigns, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser, the sum which was bid for the entire premises sold, with interest from the time of the sale at the rate percent borne by the mortgage, and if the payment is made to the register of deeds, the sum of \$3.00 as a fee for the care and custody of the redemption money, then the deed shall be void and of no effect. If a distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, then the deed shall be inoperative merely to the parcel or parcels so redeemed, and to those portions not so redeemed shall remain valid and of full effect. [MCL 600.3240(1); MSA 27A.3240(1).]

The trial court properly granted summary disposition in this case because no factual basis could provide a basis for recovery. The discharge of mortgage, which contained plaintiff's signature, stated

that payment had been made in full satisfaction and discharge of the mortgage. Plaintiff contends that the signature on the discharge of mortgage was not hers and, as a result, she did not receive the amount required by MCL 600.3240(1); MSA 27A.3240(1). Even if we assume that plaintiff's signature was forged, this would not defeat Top of Plymouth's claim to the property. The purchase of the disputed property at foreclosure did not grant the Perrys any rights of ownership and possession; they had only a contingency interest in the property that would not vest until after the expiration of the redemption period. *Kubczak v Chemical Bank & Trust*, 456 Mich 653, 661; 575 NW2d 745 (1998). It is not disputed that \$22,251.79, the amount required by statute, was delivered by the mortgagor to Richard Perry and deposited in their joint account. We cannot presume, in the absence of other evidence, that Richard Perry could not receive monies for the couple. Release and payment barred plaintiff's claim and justified summary disposition pursuant to MCR 2.116(C)(7). Additionally, summary disposition was warranted because plaintiff failed to raise a genuine issue of material fact. MCR 2.116(C)(10).

We also conclude that summary disposition was proper as to Richard Perry and Costa. Plaintiff contended that Richard Perry and Costa committed fraud by forging her signature on the release of mortgage. The alleged forgery took place in 1989. Plaintiff and Richard Perry were divorced in 1990. During the course of the divorce proceedings, Richard disclosed both the mortgage and the amount received for its discharge. Plaintiff would not have had any right to block the release of mortgage once the money was tendered. In addition, the proceeds received from the mortgagor were accounted for in the judgment of divorce.

Collateral estoppel bars relitigation of issues where the parties had a full and fair opportunity to litigate those issues in an earlier action. *Dearborn Heights School Dist No 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998). The issue concerning the property now held by Top of Plymouth was resolved in the divorce proceedings; it cannot be revisited in the present case. Even if plaintiff believed she was defrauded of marital property, her relief against Richard Perry would be obtained by reopening the divorce case, not by bringing the present claim. *Nederlander v Nederlander*, 205 Mich App 123, 125-126; 517 NW2d 768 (1994). However, it is clear from the records presented that the proceeds from the sale were accounted for in the divorce. One of the requisite elements for fraud is damages. *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). Even if plaintiff could show a tortious act, she could not show damages arising from that act. Because plaintiff could not show damages, summary disposition was proper as to both Perry and Costa.

Plaintiff also argues that the trial court improperly sanctioned plaintiff for filing a frivolous claim against Top of Plymouth. We review the imposition of sanctions for clear error. *Feick v Monroe Co*, 229 Mich App 335, 345; 582 NW2d 207 (1998). When a party or his attorney signs a pleading, he verifies that it is brought in good faith and is supported by existing law. MCR 2.114(D); *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 720; 591 NW2d 676 (1998). Where a pleading is filed in violation of the rule, the court may assess sanctions. MCR 2.114(E); *FMB-First Mich Bank, supra* at 720-721.

We conclude that plaintiff's claim against Top of Plymouth was frivolous. Under the redemption statute, plaintiff possessed no interest in the property, regardless of her husband's actions, upon Top of

Plymouth's redemption of the property. The statute clearly provides that the sheriff's deed which bore plaintiff's name was "void and of no effect" upon the statutory redemption. Therefore, plaintiff had no viable claim to the property. Plaintiff's argument that her husband conducted all transactions involving this property without her knowledge does not alter the statutory effect of Top of Plymouth's redemption. Even if plaintiff had a viable claim for fraud against her husband, Top of Plymouth obtained title to the property at redemption, which plaintiff would have been powerless to prevent.

However, we decline to impose additional sanctions against plaintiff for a frivolous appeal, as requested by both Top of Plymouth and Costa. This Court may assess actual and punitive damages or take any other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because (a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal or (b) if a pleading, motion, argument, brief, document, or record filed in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to this Court. MCR 7.216(C)(1). Although we have concluded that plaintiff's arguments are without merit, we cannot conclude that the appeal was so without merit as to be vexatious. *Haverbush v Powelson*, 217 Mich App 228, 241; 551 NW2d 206 (1996).

We affirm.

/s/ Richard A. Bandstra  
/s/ Donald E. Holbrook, Jr.  
/s/ E. Thomas Fitzgerald